Paper No. 11
GFR

8/15/00

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

Trademark Trial and Appeal Board

_____

In re Cranston Print Works Company

_____

Serial No. 75/400,051

_____

Donna M. Weinstein of Fish and Richardson, P.C. for Cranston Print Works Company.

Jill C. Alt, Trademark Examining Attorney, Law Office 114 (Mary Frances Bruce, Managing Attorney).

_____

Before Hairston, Rogers and McLeod, Administrative Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Cranston Print Works Company has filed an application to register the mark PRIVATE LINES in International Class 24 for goods identified, following amendment, as "textile fabrics in the piece made of natural and/or synthetic fiber and combinations thereof."[1] The Examining Attorney refused registration of applicant's mark under Section 2(d) of the

[1] Serial No. 75/400,051, filed December 4, 1997, based on applicant's allegation of a bona fide intention to use the mark in commerce.

Trademark Act, 15 U.S.C. § 1052(d), because of the prior registration of PRIVATE COLLECTION, in the same class and for exactly the same goods.[2]

When the Examining Attorney made the refusal of registration final, applicant appealed. Both applicant and the Examining Attorney have filed briefs, but an oral argument was not requested. We affirm the refusal.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In the analysis of likelihood of confusion presented by this case, key considerations are the similarities of the marks, the identical nature of the goods, and the presumptively similar classes of consumers for these goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

The goods are exactly the same and there are no restrictions as to channels of trade or classes of consumers. Indeed, applicant has made no argument to the

[2] Registration No. 959,608, issued May 29, 1973, based on a claimed date of first use of May 3, 1972. A combined Section 8 & 15 affidavit was filed and accepted. The registration was renewed for a 10-year term on May 19, 1993.

contrary. In view thereof, we note that when the goods of the parties are directly competitive, the degree of similarity in the marks necessary to conclude that confusion among consumers is likely is not as great as when there are differences in the goods. *See Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1773 (TTAB 1992).

The involved marks are both in typed form. Thus, there are no design elements or forms of lettering which serve to distinguish the marks. Each includes the arbitrary term PRIVATE and a second, disclaimed term. Disclaimed or descriptive terms, though they must be considered when comparing marks, typically are less significant. *Tektronix, Inc. v. Daktronics, Inc.*, 189 USPQ 693 (CCPA 1976). Moreover, the connotations of the marks, considered in their entireties, are quite similar.

We acknowledge the various dictionary definitions proffered by both the applicant and the Examining Attorney. We also take judicial notice of the following, which we find most apt, in view of the nature of the involved goods:

> **line** …10 a : a stock of goods on hand and available for sale or bought for resale usu. including more than one kind of item but of varied quality and price.
> Webster's Third New International Dictionary 1314 (1993).

> **collection** …2 : a number of objects or persons or a quantity of a substance that has been collected or has collected often according to some unifying principle or orderly arrangement.
> Webster's Third New International Dictionary 444 (1993).

Applicant's mark, PRIVATE LINES, has the connotation of a stock of fabrics of varying quality and price. Registrant's mark, PRIVATE COLLECTION, has the connotation of a number of fabrics that have some unifying characteristic. The difference in connotation is subtle and may not be recalled by consumers who are confronted with the marks at different times.

The test for likelihood of confusion is not a side-by-side comparison of the marks, which often cannot be made by the consumer, but rather, must be based on the similarity of the general overall impressions engendered by the marks. *See Puma-Sportschuhfabriken Rudolf Dassler KG v. Roller Derby Skate Corporation*, 206 USPQ 255, 259 (TTAB 1980). Moreover, consumers normally retain a general, rather than a specific, impression of trademarks and the fallibility of purchaser memory must be considered in our analysis. *See Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991) *aff'd unpub'd* Fed. Cir. June 5, 1992, and *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

In view of the similarity in the marks' appearance, sound and connotation, the identical nature of the goods and presumptively similar channels of trade or classes of consumers, we find there to exist a likelihood of confusion or mistake by consumers.[3]

Decision: The refusal of registration under Section 2(d) is affirmed.

P. T. Hairston

G. F. Rogers

L. K. McLeod

Administrative Trademark Judges, Trademark Trial and Appeal Board

[3] Applicant has reminded us "of the settled principle that any doubt as to descriptiveness should be resolved in favor of the applicant." We remind applicant that it is equally well settled that any doubt on the question of likelihood of confusion, though we have none in this case, is to be resolved in favor of the registrant. *See In re Hyper Shoppes (Ohio), Inc.*, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).